

REPORT OF INVESTIGATION

FEBRUARY 25, 2006 POLICE SHOOTING  
DECEASED: AARON BROWN  
OFFICER: CARL STOWE  
CASE #: O6109452

SUBMITTED BY:

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## ***I. Preface:***

Aaron Brown's death has resulted in immeasurable loss to his family and friends. Just after 4:00 a.m. on the morning of February 25, 2006, Brown, 19, was shot while he was the passenger in the back seat of his Jeep Cherokee. The jeep was being driven by Stephen Smith, a friend of Brown's, in the parking lot of the IHOP Restaurant located at 6254 Duke Street, Alexandria. The shot which killed Brown was fired by Alexandria Police Officer Carl Stowe, who was working an off duty detail as a security officer at the restaurant. Brown was pronounced dead at the scene.

Two starkly different accounts of these events have emerged from this investigation. The first, supported by later accounts of passengers in the jeep, suggests that Stowe began firing on the vehicle from a distance and location in which he was in no imminent danger, implying that he fired in order to prevent the escape of persons he suspected of committing the misdemeanor offense of failing to pay a restaurant check. The second, supported by other witnesses in the parking lot, original statements from the passengers in the jeep, and Officer Stowe's account, and corroborated by the physical evidence and forensic findings, suggests that Stowe began firing from a position in which it appeared to him that he was about to be run over, after the vehicle suddenly swerved toward him and as it was nearly upon him.

The physical evidence supports the second account and shows the details of the first version to be impossible. Considering the totality of the evidence, the first account does not meet the minimal evidentiary requirements of probable cause. If it did, Officer Stowe could be criminally charged. It does not. The evidence in this case clearly establishes that Stowe fired after the jeep changed course and headed at him and he was under reasonable apprehension that his life was in danger. Under such circumstances, he, as any citizen would be, was legally entitled to defend

himself.

While Stowe began firing as the jeep came toward him, he continued to fire as the jeep passed. All the evidence indicates the third shot which hit the vehicle killed Brown, and was fired from a point perpendicular to the driver's side of the jeep from a short distance. While Stowe was not in the path of the jeep at that instant, the forensic evidence of the case and scientific studies of human reaction time establish that Stowe could not reasonably have been expected to have reacted differently and stopped firing before he fired the fatal shot. While the result of Stowe's decision to fire was tragic and certainly unintended, neither the decision nor the result defines criminal conduct. This report sets forth the basis for that conclusion.

Much, but certainly not all, of the investigation into this case was completed by detectives in the Criminal Investigation Section of the Alexandria Police Department. Invariably, public scrutiny of any police shooting raises the question of whether any police department can conduct an objective investigation into the conduct of one of its own. I have revisited the police inquiry independently, and rigorously tested it by consultation with independent experts and by re-interviewing witnesses myself.<sup>1</sup> The most important responsibility of a prosecutor is to serve the law, not factional purpose. I categorically reject the notion that "prosecutors give special treatment to police officers who err, no matter how disastrous the consequences." (See, *Leniency in Fairfax*, editorial, Washington Post, March 25, 2006.) In the final analysis, the fact that Carl Stowe was a police officer with thirteen years of experience when he fired his weapon on February 25, 2006 worked to his detriment, not to his advantage. His station strongly suggested that his conduct should be held to a higher standard than that of an ordinary citizen, and it was scrutinized accordingly.

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<sup>1</sup> A Commonwealth's Attorney may ask a Court to empanel a special grand jury with subpoena power for investigative purposes. While such a procedure might be of benefit to the fact finding process in cases in which witnesses are reluctant to come forward, that was not the case here.

The sole purpose of this inquiry was to determine whether or not the conduct of Officer Carl Stowe constituted a crime under Virginia law. This report does not examine such issues as compliance with the policies, procedures and directives of the Alexandria Police Department, or whether those policies, procedures and directives should be changed. That determination will be made by the Police Department, not by the Commonwealth's Attorney. This report does not examine issues related to officer training or any issues related to civil liability, and should not be interpreted as expressing any opinion on these matters.

## ***II. Overview of the Investigation:***

The Criminal Investigations Section of the Alexandria Police Department took control of the scene of the shooting shortly after it took place, a few minutes after 4:00 a.m. on the morning of Saturday, February 25, 2006. Detectives from the homicide section were assigned as the primary investigators in the case. Protocol applied to all fatal police shootings in Alexandria requires a criminal investigation. The scene had been cordoned off by officers who had arrived shortly after the shooting. I was called at home and drove directly to the scene, arriving at the same time as the supervisor of the homicide detectives. I remained at the scene during the initial stages of the investigation, and closely examined the vehicle in which Brown was a passenger before it was moved from its point of impact with other parked vehicles.

The scene was processed by members of the Alexandria Police Department Crime Scene Investigation Unit. Numerous photographs were taken, including aerial photographs with the assistance of a Fairfax County Police helicopter. Evidence was collected and the scene was diagramed. The vehicle in which Brown was a passenger was impounded and stored in a secure bay at the Police Department for further processing. Since the vehicle was impounded, it has been

examined by an experienced mechanic and by Julian J. Mason, a firearms expert employed by the Virginia Department of Forensic Science, to reconstruct specific aspects of the incident, including bullet trajectory patterns and distance of fire. The vehicle and other items of evidence from the crash location were examined by the Fairfax County Police Department's accident reconstruction unit, in order to reconstruct other aspects of the incident, including the speed and direction of travel of the vehicle at the time of its impact with other vehicles. On March 8, 2006, members of this unit, working with Alexandria detectives, conducted a series of driving tests with a similar model jeep vehicle in the parking lot where the shooting took place. Findings of the Department of Forensic Science and the data compiled by the Fairfax County Police Department have been submitted in writing.

An autopsy examination was conducted on the body of Aaron Brown on the morning of February 25, 2006 by Constance R. DiAngelo, M.D., at the Northern Virginia office of the Chief Medical Examiner. The results of the examination were submitted by written report of autopsy dated March 1, 2006.

Members of the Criminal Investigation Section of the Alexandria Police Department conducted numerous interviews with witnesses. All of the passengers and the driver of the vehicle in which Brown was riding were brought to police headquarters after the incident and interviewed. These interviews and others were recorded and transcribed. Detectives also located and interviewed other witnesses who were in the parking lot at the time the shooting took place. Officer Stowe was also interviewed at the scene, and again at police headquarters shortly after the incident, and his statement at headquarters was recorded. The file of the Alexandria police investigation was received in the Commonwealth's Attorney's Office on April 13, 2006. This file contained witness

interview transcripts and detailed reports from the officers and detectives involved in the investigation.

Transcripts of the interviews of the passengers in the jeep were provided to the Commonwealth's Attorney's Office on March 14, 2006. After reviewing the transcripts of these interviews, I re-interviewed the passengers, Officer Stowe, and other witnesses. Some of these interviews were conducted at the scene in order to offer the witnesses the opportunity to specifically identify where they believed certain activity occurred.

In reviewing the evidence in this case, I consulted with experts in the fields of firearms training and the use of force by law enforcement officers, and conducted a study of the literature related to use of force and shooting reaction time. I have also consulted with other prosecutors from jurisdictions across the country who have reviewed similar cases. The case was also reviewed by a team of experienced prosecutors in the Commonwealth's Attorney's Office.

### ***III. Witness Accounts:***

#### ***Stephen Smith (driver of jeep):***

Stephen Smith, 19, was the driver of the jeep in which Brown was a passenger. When interviewed by police on February 25, 2006 he stated that he and his friends had been to a party earlier in the evening, then decided to go to IHOP. He stated he left the restaurant first and went outside to warm up the car. When asked if there was any discussion about not paying the bill, he said "I only found that out later when they got into the car, after that point, I couldn't leave my friends stranded." Smith also stated that he understood that Aaron Brown was intending to pay the bill with his debit card. He said when other members of the group got into the car, they told him to "go, go, go," because they had not paid the bill.

Smith stated that he drove around the top median in the parking lot, drove back to exit the lot when he saw someone run out, and he then “kinda hit the gas to go around him”. Smith stated that when he saw the individual he was “three or four car lengths” in front of the vehicle, with his hands out signaling the vehicle to stop. Smith said the officer appeared to be moving to the right of the vehicle, so he steered hard left at about the same time the officer moved to Smith’s left to get out of the way but was then in the path of the car. Smith said the officer drew his gun and fired while he was “dead center right in front of me.” At that time Smith estimated the officer was three car lengths in front of the jeep. Smith estimated the speed of the jeep at that time to be 12 to 15 miles per hour.

Smith was asked why he thought the officer drew his weapon, and stated that “I guess that he saw that I was going, maybe if he heard the engine or if he saw how fast I was coming, which I didn’t realize I was coming, he thought, he might have thought his life was threatened.” When asked by detectives whether it seemed reasonable that the officer could have thought so, Smith stated “it does seem reasonable.”

On March 25, 2006 a letter was sent to counsel for Smith requesting permission to re-interview him at the scene of the shooting. On May 2, 2006, Smith’s counsel indicated he would not permit Smith to be re-interviewed. Further discussions with Smith’s counsel led to an agreement whereby he was re-interviewed on June 6, 2006. Prior to this interview, pursuant to rules of discovery in the criminal case pending against Smith, he had been furnished with a transcript of his February 25, 2006 interview with police, and his counsel has been given the opportunity to view the video recording of that interview.

Mr. Smith was re-interviewed at the parking lot of the IHOP where the shooting took place.



He was accompanied by counsel during the interview. I asked Mr. Smith if he had the opportunity to review the transcript of the interview he had with police on the morning of February 25, 2006. He said he had gone over it. I asked him if the statements he made during the interview were accurate. He stated they were accurate, but he felt he had been pressured during the interview. He later explained he was tired and distraught during the interview on February 25. He said during the interview he was aware that Aaron Brown had been injured, but he was not told of Brown's death until the interview had been concluded. He stated since the incident he had been back to the parking lot with others who were in the jeep and they had discussed the events of February 25. I asked him to walk through the parking lot and point out to the best of his recollection where he remembered certain events happening.

Smith stated he came out first to warm up the jeep, and moved it from the north end of the lot to a location south of the door to the restaurant, where he waited for his friends to come out. After all of them had entered the vehicle, he drove north. He said by the time he entered the turn at the north end of the lot someone had said the restaurant bill had not been paid. He said the jeep did not lose traction or emit the sound of squealing tires as he drove around the turn.

Smith stated when he rounded the turn and straightened out, he looked south and saw the officer standing "dead center" in the middle of the roadway. He did not recall seeing any other people in the parking lot. He said the officer fired at the jeep when it was approximately at the first parking spot at the top of the lot (location X on diagram #1.) He said he saw the officer emerge from between the parked cars, moving his hands at his sides as if to balance himself, then draw and fire with a two hand grip. When asked to indicate where the officer was when he fired the first shot, Smith indicated a location approximately even with the parking space where vehicle # 2 is located

on the diagram, about 120 feet away from the location of the jeep. He said he remembered the first shot fired went through the windshield of the jeep near the rearview mirror, and that the officer fired the first few shots at the jeep standing in the same position without moving.

Smith stated when he realized the officer was shooting, he began making small weaving maneuvers with the jeep, swerving from side to side to avoid the shots. He said when he reached the approximate position of the center median, (location Y on diagram # 1), he decided to go to the left to go around the officer, but that the officer then moved in the same direction as if he was intentionally placing himself in the path of the oncoming vehicle. He described it as if "we were doing a dance", and said the officer would move in front of the car no matter which way he turned. He stated that everyone in the car was quiet, and no one uttered any warning or alarm. He also stated that he did not accelerate when he decided to go left to go around the officer, and estimated his speed at not more than 20 miles per hour.

Smith said he did not have a clear recollection of how many shots were fired or when the officer stopped firing. He said the jeep crashed, and he saw the officer come around the jeep, order him to the ground and place him in handcuffs.

I asked Smith about his statement to police on February 25 that it seemed reasonable that the officer would feel threatened by the jeep when he fired. Smith said he had thought about that statement and said he did not now believe it was accurate, because, as he now asserted, the officer began firing from a distance at which he was not in danger and could have gotten out of the way. At this point in the conversation we were standing adjacent to the center median in the parking lot and Smith stated he could understand why the officer would fire at that distance, but not when the vehicle was at the north end of the lot.

When asked if he recalled the officer making any hand signals directing him to stop the jeep, Smith said he thought the officer moved his hands to his sides as if to balance himself when running out from between the parked cars, but he did not signal him to stop.

***Occupants of Brown's Vehicle:***

Alexandria police detectives also interviewed the four other passengers in the jeep in which Brown was a passenger when he was shot. These interviews took place at the offices of the Criminal Investigation Section of the Department during the morning of February 25, 2006, and were recorded. These interviews were not conducted under circumstances in which the witnesses were given sufficient opportunity to point out where certain activities had taken place. For this reason, I undertook to speak with the witnesses again at the location of the incident. Summaries of these statements follow.

***Aaron Daughtrey (passenger in jeep):***

When interviewed by police on the morning of February 25, 2006, Aaron Daughtrey stated he was in the cargo area of the jeep seated facing in the direction of the passenger side. (As the car rounded the corner and proceeded southbound in the parking lot, Aaron was facing away from IHOP). He stated that because of his position he did not have a clear view of what was happening and could not be sure of the position of the officer, but saw an officer run out into the street, draw his gun, and start shooting. He was not asked nor did he describe whether or not the officer signaled for the car to stop. He stated he did not believe the officer was in the path of the vehicle, and that he fired from the right (passenger side of the vehicle) and came around to the driver's side after the vehicle crashed into some parked cars.

I re-interviewed Aaron Daughtrey at the scene on March 15, 2006. During that interview he

stated that the officer started shooting at the jeep when it was coming around the turn at the north end of the lot in order to head south. (See diagram # 1, point A). He stated when he heard the first shot, he was facing east and saw the sign for the KFC restaurant in the adjacent parking lot. He says he heard 6 shots fired in rapid succession. When he looked forward, he says he saw Stowe standing in the parking lot. When asked to describe where Stowe was, Aaron walked to a spot to the east and slightly north of the tree in the median where the parked cars were displaced by the impact of the jeep, and said it was within a ten foot radius of where he stood. (See diagram # 1, point B). (This would have placed Stowe to the south of the point of impact of the cars when the crash took place.) By this account, Daughtrey asserts that Stowe was about 150 feet away from the jeep when he started firing.

After receiving the reports of trajectory analysis and accident reconstruction, I met with Aaron Daughtrey again on April 24, 2006 in the Commonwealth's Attorney's Office. His account of events, utilizing diagrams and photographs of the scene taken by police, was not materially different from his account given on March 15, 2006. He did state that as the jeep traveled south through the parking lot it swerved from side to side, first left, then right, then left again. He also stated that since the incident, he and several friends had gone back to the parking lot where the incident took place and driven through the lot to try to approximate the speed at which they were traveling on February 25, 2006. He said he did not think the jeep was going faster than 25 to 30 miles per hour. Aaron stated that he was sitting in the rear cargo area of the jeep facing the passenger's side throughout the incident. He indicated that when Smith first pulled away from the IHOP entrance, he did so at a rate of speed that was "too fast for a parking lot" but not too fast for a residential street. Aaron stated that as the jeep came out of the turn, he heard the first shots being

fired. He stated that he did not see the officer at that point, because he was looking out the passenger's side window (to the west). He also remembered the centrifugal force of the turn pushing against him as the first shot was fired.

Aaron stated that in response to hearing the shots, he looked forward and saw Stowe standing in the middle of the parking lot. Aaron placed Stowe a bit further south in the lot than other witnesses, as he had indicated when interviewed on March 15. He stated that he could see Stowe pointing his firearm at the jeep. Aaron indicated that he felt the jeep swerve first left, then right, then sharply left. Aaron indicated that at some point in the middle of these maneuvers, he felt as though the jeep was going to crash, so he braced for impact by putting his head down and covering up.

Aaron indicated that he heard two shots, then a pause, and then another burst of shots. He indicated that he remembered shots being fired while the jeep was in the middle of the lot. When shown a map, Aaron traced the route he remembered the jeep taking. He also pointed to the median at the approximate half-way point between the turn at the north and Stowe's position to the south, and indicated that he put his head down "somewhere" around the median, and that he heard shots fired after he put his head down.

Aaron indicated that he also saw Stowe in front of the jeep after the collision. He stated that he saw Stowe make an unusual motion with his foot, describing it as a "shuffling" motion. It was clear from context that Aaron was insinuating that Stowe might have used this motion to alter the location of cartridge casings, although he did not say that he actually saw this happen. Aaron was not aware that Aaron Brown had been shot until after the jeep was at rest.

***Breklyn Paulitzky (passenger in jeep):***

When interviewed by police on the morning of February 25, 2006, Ms. Paulitzky recounted

the activities of the group prior to arrival at IHOP. She stated that when the group arrived at IHOP, she remained outside in the jeep talking to Aaron Daughtrey while others entered the restaurant. When they entered the others had already ordered, and by the time the others had been served she and Aaron Daughtrey decided not to order. She stated that the group left the restaurant one or two at a time, until only she and Aaron Daughtrey remained behind. After a short time passed, Aaron Brown called her on her cell phone and told her to come outside and get in the car to leave. She stated that she observed Adam Daughtrey leave some money for his share of the bill, and another member of the party identified as James left some money. (It is apparent that James left the restaurant and drove off in his own car before the others left. He was not present when the shooting took place.) Paulitzky said, "I'm assuming nobody else paid the bill. Nobody picked it up to go to the counter."

She and Aaron Daughtrey walked out of the restaurant and got in the jeep. The other four members of the group were in the jeep. She got in the back seat behind the passenger, and Aaron Daughtrey got in the cargo area of the jeep. She stated the manager and the officer came running out and she heard them yelling for the vehicle to stop. She described Smith's driving as "swerving all over the place", estimated his speed at between twenty and twenty five miles per hour. She stated she saw the officer in the roadway, and that she exclaimed "Oh my God you are going to kill this cop, stop!" When asked why she made this statement, she replied because the officer was in the roadway and Smith was not stopping the jeep. She described Smith as swerving to the left in an attempt to "go around" the officer. She stated that the officer fired his gun. When asked whether she thought Smith might strike the officer with the car, she answered "yes."

On March 15, 2006, I met Ms. Paulitzky at the location of the shooting and she gave an

account of what occurred. She said the time of the call from Aaron Brown as recorded on her cell phone was 4:03 a.m. At that time, she and Aaron Daughtrey came out into the parking lot and got into Brown's jeep, which was parked to the south of the door. She got in the back seat behind the passenger, and Aaron got into the cargo area by jumping over the back seat. The jeep pulled off at a normal speed heading north through the parking lot towards Duke Street.

The jeep, being driven by Smith, rounded the corner to the left, to head back south through the lot in order to exit. As the jeep rounded the turn around the median in the north end of the parking lot and headed south, she heard what she believed was gunfire. She described the first shot as taking place as they were "half way through the turn." (See diagram # 1, point A).

She stated the jeep proceeded south through the lot in the middle of the roadway, in a straight line, at least until the middle median point, when it then changed direction. (See diagram # 1, point C). After the jeep passed the middle median, she says it swerved right then left. She says she saw a person she believed to be "the officer" on the east side of the roadway, then saw him again on the west side with his gun out. The jeep crashed into other vehicles, and she says the officer approached the jeep from the passenger side and ordered the occupants out.

When asked on March 15 if she ever thought the jeep was in danger of striking the officer, she said no. I asked her why she had said to the driver that he was in danger of killing the officer, as she recounted in her original interview with the police on February 25. She said she did not remember making that statement to police on February 25.

I interviewed Paulitzky again on April 26, 2006 in the Commonwealth's Attorney's Office. She was accompanied by counsel. When asked again about whether she had said "Oh my God you are going to kill this cop, stop!" as Smith was driving the jeep, she said "that's what I was thinking.

I was thinking it, I don't know if I said it out loud." When asked why she was thinking it, she said that when the jeep swerved the officer moved in the same direction and was in front of the jeep. She was uncertain of where the officer was when he began firing.

***Adam Daughtrey (passenger in jeep):***

Adam Daughtrey was interviewed by police on February 25, 2006. Adam and Aaron Daughtrey are brothers. He stated that as the group finished dining at IHOP, he put ten dollars on the table and left to wait in the jeep. He stated that Aaron Brown offered to pay the remainder of the bill with his debit card. He said that he went outside and sat in the car with Steve Smith and Chris Walters. (At the time of the interview, Daughtrey identified Walters as Matt. Walters had engaged the assistance of his friends to lie to the police about his true name.) Daughtrey stated that after a short period of time everyone else came outside and got into the jeep. He was seated in the back seat next to Aaron Brown, who was seated behind the driver.

Daughtrey says the jeep drove through the lot, rounded the corner at the top of the lot and began speeding. He says he felt "fast acceleration" and then heard a rapid series of gun shots. He said he instinctively ducked his head down and then the jeep crashed into other vehicles. When asked if he saw the officer in the path of the vehicle, Daughtrey stated the vehicle was headed to the right of the officer, and "there would have been two or three feet of clearance." He stated after the jeep crashed, he attempted to provide first aid to Aaron Brown.

On March 15, 2006, I re-interviewed Adam Daughtrey at the parking lot where the shooting took place. He said he walked to the car and Steve Smith and Chris Walters were already in the car. He said Aaron Brown came out shortly thereafter and they pulled up in front just to the south of the door of IHOP and picked up Breklyn and Aaron Daughtrey, and that Smith drove off at a



“casual” pace.

He said as the car rounded the top median and headed south, he could feel the pull of the turning motion of the vehicle when the first shot rang out. He said he looked forward and saw a person hop out from between two parked cars to the south east, crouch and fire with a two handed grip. He believes that he heard 6 or 7 shots and that at least 4 of the shots had been fired before the jeep passed the middle median strip in the lot. After the car passed that median point, he said he could feel it swerve to the right then sharply to the left, then jerk sharply just as it crashed.

Adam said once he saw the officer and heard the gun shots he ducked down in the back seat, so he did not actually see the jeep swerve, but felt it do so. He states he was seated next to Aaron Brown, and that Aaron was facing forward and not contorted or twisted in his seat. When asked to point out in the parking lot the position where he saw the officer, Adam indicated that he came out from between vehicles parked from the second to the fourth space to the north of the bottom median where the crash took place. (See diagram # 1, point D). By this account, this would mean that Stowe began shooting at the jeep when it was 120 or more feet away. He said he did not look up again until the car had crashed.

After receiving the reports of trajectory analysis and accident reconstruction, I met with Adam Daughtrey again on April 24, 2006 in the Commonwealth’s Attorney’s Office. He was accompanied by counsel. His account of events, utilizing diagrams and photographs of the scene taken by police, was not materially different from his account given on March 15, 2006. He also stated that as the jeep traveled south through the parking lot it swerved from side to side, first right, then left. He stated it was still his belief that the shot that hit the side of the vehicle (and Aaron Brown) was fired when the jeep was in the turn at the top of the parking lot. When asked if it could

have been fired at a closer distance when the vehicle passed the officer to the side, he stated he could not be sure.

Adam stated that he remembered driving away from IHOP at a “normal” rate of speed. He stated that as the jeep was beginning to come out of the turn at the north end of the parking lot, he could see Stowe standing at the far, southern, end of the lot. He stated that he could not tell that Stowe was a police officer, and instead thought that perhaps someone was trying to “jack”, or rob, him and his friends. He stated that he could see Stowe “jump out” of the row of cars and that Stowe was pointing his firearm towards the jeep while it was still in the turn. Adam said that Stowe made no hand gestures to stop the jeep.

Adam remembered that as the jeep was coming out of the turn, he heard the first shots fired. Adam stated that he remembered this because he could still feel the centrifugal force on his body as the Jeep finished the turn. Adam stated that when he realized that they were being shot at, his first impulse was to duck, placing his hands over his head. Adam indicated that from this point until “right before” the jeep collided with the parked cars, his head was down and he could not see what was transpiring.

Adam stated that while his head was down, he could feel the jeep swerve sharply, first to the right, and then back to the left. He stated that after the jeep swerved back to the left, he looked up and realized that the jeep was about to crash. Adam stated that after the jeep crashed, he saw Stowe in front of the car ordering him and his friends out of the car.

Adam said that after he exited the car, he looked specifically for cartridge casings on the ground near where he believed Stowe had been when he fired. He indicated that he saw none, and insinuated that he found it suspicious that cartridge casings were located later in the places indicated

by cones or placards in the photographs. Adam stated that his best guess was that the round that killed Aaron Brown was fired at the jeep while it was still in the turn. When asked whether the shot that killed Aaron could have been fired later in the incident, closer to where the jeep collided with the parked cars, Adam agreed that was possible, although he was still inclined to believe that the round had hit the jeep while it was in the turn.

***Christopher Walters (passenger in jeep):***

Walters was interviewed by police on February 25, 2006. At that time, he identified himself as Matthew Dodson. When I asked him on March 23, 2006 why he had given a false name to the police, he stated he did so because he feared he was wanted on criminal charges at the time and that he would be arrested.

Walters stated that when he got up to leave the restaurant, Aaron Brown told him he intended to pay the bill with his debit card.<sup>2</sup> He says that shortly after the group had entered the jeep to leave IHOP, the “security guard” came out and ran toward the vehicle, and that the driver started to go faster. He said the driver (Smith) sped up around the turn, and was going too fast and almost hit a car on the right side, so “he swerved and kind of steered to the left” and crashed. Walters said he heard gunshots going off, and that he hit his head on the dash board when the jeep crashed. He was in the front passenger seat.

When he was asked why he thought Smith accelerated, Walters said he did not know, but that the jeep fish-tailed around the turn, almost hits a car on the right, and then he “over steers and hits a car parked over here and the guard was shooting rounds at us from point blank right in front of us.”

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<sup>2</sup> According to attorneys representing the Brown family, there is no record of any such payment.

Walters indicates that the car swerved to the right then left, and at that point he saw the officer firing. He said he heard at least four shots. He later stated that it appeared to him that when the vehicle swerved, "it looked like he (Smith) was steering almost straight into him" (the officer).

I re-interviewed Walters at the IHOP parking lot on March 23, 2006 and he agreed to walk through the events as he recalled them and point out where events had taken place. Walters stated he left IHOP and went to the jeep where he found Steve Smith had started the vehicle. They were soon joined by Aaron Brown and Adam Daughtrey. They then drove the car around to the front of the restaurant and picked up Aaron Daughtrey and Breklyn. They drove to the top of the lot northbound at a normal rate of speed, and turned to come south to exit the lot. Walters states that he was in the front passenger seat, and looked forward as the car was rounding the turn to see an officer firing at their car.

He said the officer fired as they rounded the turn, and could have shot into the side of the vehicle as it was turning. He heard six shots in rapid succession, and described the officer as standing in the road three or four feet from the middle median strip firing with a two hand grip. (See diagram # 1, point E). He said the officer made no signal for the car to stop.

Walters stated the vehicle swerved or took the turn wide, and almost hit vehicles on the right, and that the driver over corrected to the left, causing the jeep to crash into parked cars. He placed the site of the crash at the middle median. When it was later pointed out the crash had taken place at the lower median, he acknowledged that he was not sure and stated he had poor night vision. He then stated that he was unsure of where the officer was when he fired, but that he was "near a median".

Walters said he believed the officer fired all the shots before the car passed him, and at the

time the officer fired he was not in danger of being hit because the car was so far away. He also stated that when the car swerved left the driver accelerated.

***Other Witnesses:***

Police also located several other individuals in a group who had been at the IHOP restaurant that same morning and had left just prior to this incident. Stowe had followed these individuals into the parking lot and confronted them about payment of their bill as well. The group had ordered food, but then left before being served and without paying. The matter of this bill was resolved following a confrontation during which other officers were called to assist Stowe, as one member of the group became unruly. Members of this group were in the parking lot when the shooting took place. They left immediately and were not present when officers arrived to investigate, but were located and interviewed later.

***Mr. McKay and Ms. Avalos:***

McKay and Avalos were seated in the back seat of a car belonging to another friend. The car was parked in the space between vehicles # 8 and 9 in the parking lot, facing east. Facing in this direction, they did not see the shooting or what happened immediately prior to it. McKay says he saw the jeep round the corner at the north end of the lot and "I heard tires screech, and the car was going pretty fast. I don't know how fast, but definitely not 15 or 20 like the speed limit in the parking lot is." He said he heard six or seven shots, but that he did not see where the officer was when he fired. Avalos reported hearing the tires of the vehicle squealing and hearing shots, but she did not see events take place.

***Ms. Kocur:***

Ms. Kocur is the owner of the car in which McKay and Avalos were seated. She was

interviewed by police on March 2, 2006. I re-interviewed her on April 13, 2006. Using overhead photographs of the scene taken on the day of the incident, Kocur pointed out that her car was parked in the space between vehicles # 8 and 9 on the scene diagram. She indicated she was standing near the rear of her car and could see the parking lot.

Kocur stated that after the matter of their bill had been resolved, she and her friends were preparing to leave the parking lot. She heard tires squealing or “peeling” at the north end of the lot and saw the jeep “speed by us.” Kocur stated that “he was going pretty fast, probably I would say 40 miles an hour, maybe.” Kocur stated that no shots were fired until after the jeep passed by her location. She says that she heard a rapid succession of shots and looked to see Stowe with his “back up against the parked car,” which she pointed out as either vehicle # 5 or 6 in the diagram. Kocur’s observation of Stowe’s position was limited to observing him against the car. She did not see where he was before the shots were fired.

***Mr. Hamm:***

Mr. Hamm was with Kocur, McKay and Avalos, and was standing in the parking lot as well. He was interviewed by police on March 2, 2006. He described the encounter with Stowe in which his group was stopped and asked about an unpaid bill at IHOP. Hamm acknowledged that he cursed at Stowe, and that other officers were called to the scene. He was detained briefly by other officers and then released. After the matter was resolved, Hamm stated he was walking back to Kocur’s car and heard tires screeching and looked up to see the jeep entering the turn at the top of the parking lot.

Hamm then walked across the lot to the east side, where he stood slightly to the south of Kocur’s car and attempted to make a telephone call on his cell phone. He stated that he then heard

shots and looked to see Stowe against a white vehicle (vehicle # 5). After the shots were fired and the jeep crashed, Hamm said he and Kocur entered her car and the four left the parking lot.

Mr. Hamm was re-interviewed at his place of employment on May 18, 2006. Using photographs of the IHOP parking lot, he pointed out the location where he was. He stated that he was initially in the area of the middle median strip (location E on diagram 1), and he heard tires squealing from the jeep as it drove north in the lot and as it entered the turn to head south. He stated he walked across the lot to a position a short distance south of where Kocur's car was parked and was attempting to make a call on his cell phone. From the photographs, he identified the location of Kocur's car as shown on the diagram between vehicle # 8 and # 9. He stated that the jeep passed his location before any shots were fired. When he heard the shots, he looked to see the officer backed up against the trunk of a white vehicle, (identified in the diagram as vehicle # 5). By the time he looked over in that direction, all the shots had been fired and the jeep had crashed.

***IHOP Personnel and Customers:***

The waiter at IHOP was interviewed and stated that the group consisting of Brown and his friends left the restaurant without paying their check. He gave a copy of the check to police. He stated he did not go outside after he told Stowe the group had left without paying and he did not see what happened in the parking lot. No other restaurant personnel indicated witnessing any of the events in the parking lot.

When police arrived on the scene of the shooting on February 25, 2006, customers inside the IHOP were questioned. No customer indicated he or she had witnessed any of the incident in the parking lot. One customer seated at the table next to the table occupied by Brown and his friends stated he overheard conversation among members of the group about leaving without paying the

check.

A police canvass of the hotel next to IHOP, as well as surrounding commercial establishments, turned up no additional witnesses who saw events in the parking lot.

#### ***IV. Officer Stowe's Account of Events:***

Carl Stowe has been a member of the Alexandria Police Department for 13 years. On Friday, February 24, 2006 Stowe had worked a normal schedule during the day from 6 a.m. to 4 p.m. as part of Group C, providing security services to the federal courthouse in Alexandria. During the previous three days he had worked 6 a.m. to about 6 p.m. each day in the same assignment. He had not worked any other evening details that week. After finishing his shift on Friday, he went home, and then reported to begin his detail at IHOP at 1 a.m. on Saturday, February 25, 2006. He worked the detail in uniform.

Stowe was interviewed by homicide detectives on the morning of February 25, 2006. He stated that just before this incident, he had dealt with another group of customers at the IHOP over a disputed bill, and other officers had been called to assist when one of these patrons became unruly.

Stowe related that as he returned to the restaurant, he was approached by the waiter about another group. The waiter gave Stowe the check and pointed out the table. As Stowe looked at the table, he could see two people at the table ( Aaron Daughtrey and Paulitzky ) who then got up, walked through the restaurant, and left. He followed them outside.

Officer Stowe said that once outside, the two ran to a jeep parked in the middle of the drive area, running with its lights on. Stowe said he could tell there was a driver in the vehicle but could not see anyone else in the car at that time. Stowe said he thought the male got into the front passenger seat and the female got into the rear passenger seat. He started to move diagonally off the



sidewalk into the parking area yelling for the vehicle to stop. The vehicle sped off, heading north past the restaurant at a speed Stowe estimated at 25 to 30 miles per hour.

Stowe related that he saw the jeep turn left at the top of the lot, then left again to head south to exit the lot. At that point he ran across the lot between parked cars and went to the middle of the drive area on the east side of the lot. As he did so, he said he could see Kocur and Hamm near their vehicle. Stowe explained that in the course of working this same detail on many occasions, he would signal people who had left without paying to stop in the parking lot, and they would usually do so.

As Stowe went into the driving lane on the east side of the lot, he said he heard the engine of the jeep speed up and the tires spin or squeal as if losing traction. Stowe said as the vehicle headed south toward his location, it was in the correct lane of travel (to his left), but that it was increasing its speed and probably was not going to stop. At that point Stowe said he began to move back to his right (east), and was just going to let the car pass him and leave. As Stowe moved to his right, he said the vehicle suddenly “squared up” with him, without slowing, and that the vehicle kept coming towards him.

Stowe said he had his right hand in the air signaling the vehicle to stop, but that when the vehicle came at him and did not slow down, he drew his weapon and fired. He stated that he fired “as I was moving away and the front of the vehicle, the front of the vehicle kept turning and coming toward me, and it wasn’t slowing down, it was apparent he was just trying to run me over. He wasn’t slowing down. He kept turning in the direction that I was moving.” Stowe estimated the jeep may have been traveling at 35 miles per hour. He said he moved in sort of a “semi-circle” (indicating east and north) to get away, and intended to go between parked cars but bumped into a

car instead.

Stowe said he fired with his right hand in a one hand grip, aiming at the driver, saying “I was trying to stop the vehicle from trying to hit me, and the driver was in control of the vehicle.” He thought he fired four times. He was not sure where the rounds hit the jeep, but later surmised that one had gone through a side window which he saw was shattered after the jeep crashed. He was asked how close the car was when it passed him, and he said “I could reach out and touch it.”

Stowe was re-interviewed at the scene of the shooting on May 17, 2006. He was accompanied by counsel. His description of events was consistent with his original account. He indicated that when he walked into the parking lot and looked north, he saw Kocur in the parking lot near her vehicle, and stated that the jeep did not turn toward him until it had passed her location.

#### ***V. Physical Evidence:***

##### ***A. Autopsy Results:***

An autopsy examination was conducted on the deceased on February 25, 2006 at the office of the Chief Medical Examiner. Results of the examination were reported in writing to the Commonwealth’s Attorney’s Office by report of autopsy (# 081-06) dated March 1, 2006. The pathologist conducting the examination was Constance R. DiAngelo, M.D. Alexandria homicide detectives and a crime scene investigator were present at the autopsy. The pathologist concluded that Brown died as a result of a gunshot wound of the chest. The same projectile also caused a wound to the upper left arm. In lay terms, the bullet which killed Brown entered and exited the upper left arm, then entered the left side of the chest, passing through chest tissues, the left lung, the heart, and the right lung. The bullet was recovered on the right side from just under the skin, having traveled rightward, slightly downward, and backward in the body. The bullet was collected by police as

evidence. Brown was 5' 8 3/4" tall and weighed 137 pounds. The wounds are described in detail by the pathologist as follows:

1. *Gunshot wound of the left arm: There is an entrance gunshot wound of the left posterolateral arm, located 13 1/4" inferior from the top of the head and 1/2" posterior to the lateral arm midline. The entrance wound measures 1/2" with 1/8" abrasion in the 3 to 9 o'clock positions. No soot or powder tattooing is grossly identified on the shirts or skin. The path is through the skin and tissue of the arm. The exit wound is present in the superomedial aspect of the left arm, located 14 3/4" inferior from the top of the head and 1/8" anterior to the medial arm midline. The wound measures 1/2" x 7/16" and the edges can be approximated. The track has associated tissue destruction and hemorrhage. The direction is rightward, slightly downward and forward.*

2. *Gunshot wound of the chest: There is an entrance gunshot wound of the left superolateral chest, located 14 3/4" inferior from the top of the head and 6 3/4" to the left of the midline or 1 1/4" anterior to the midaxillary line. The entrance wound measures 1/2" x 5/16" with 1/4" x 1/2" abrasion in the 2 to 6 o'clock positions. No soot or powder tattooing is grossly identified on the shirts or skin. The path is through the skin and tissue of the chest and left 3<sup>rd</sup> intercostal space in the midclavicular line with entrance into the chest cavity. The path continues through the left upper lobe (lingula) of lung, pericardium, anterior left ventricle of the heart adjacent to the septum and left anterior descending coronary artery, interventricular septum, aortic and tricuspid valves, posterolateral right atrium of the heart and the right middle lobe of lung and exits the right chest cavity through the right 4<sup>th</sup> intercostal space and 5<sup>th</sup> rib in the anterior axillary line. The bullet continues through the lateral chest tissues to the inferior aspect of the axilla (armpit) where a 1/2" laceration with visible copper-jacketed bullet is present with a 1/2" x 1/2" red-purple contusion at the superior aspect. The bullet is located 15 1/2" inferior from the top of the head and 1/2" anterior to the midaxillary line. The track has associated tissue destruction and hemorrhage including hemothoraces (1000 ml right; 2200 left) and blood in the pericardial sac. The direction is rightward, slightly downward, and backward.*

*This gunshot wound is a re-entry wound from the gunshot wound of the left arm based on alignment of the wounds and examination of the clothing.*

Blood samples taken at the autopsy were submitted to the Department of Forensic Science for analysis. A certificate of analysis submitted on March 23, 2006 by the Department's forensic toxicologist indicates Brown's blood alcohol content was .13. Tests were also positive for trace amounts of marijuana.

***B. Physical Evidence From the Scene:***

On the night of the incident, the scene of the shooting was preserved, documented and photographed by crime scene investigators from the Alexandria Police Department. The locations of objects were carefully measured from a reference point so that a scale drawing of the area could be prepared.

Crime scene investigators initially found five shell casings on the ground. These casings had been observed by a patrol officer who arrived on the scene almost immediately after the shooting. That officer preserved their location by placing traffic cones over them so they would not be moved. Crime scene investigators were later contacted by the owner of the van next to which these five casings were found. The owner of the van indicated he had found an additional shell casing on the roof of his van when he moved it after the scene had been released. He turned it over to the officer who had interviewed him, who in turn gave it to crime scene investigators. A diagram showing the location of shell casings is attached.<sup>3</sup>

Stowe's service weapon was taken from him at the scene and secured. The magazine was found to contain eight rounds. This load of eight remaining rounds, together with the six recovered casings, indicates that at the time of the shooting Stowe's weapon contained a fully loaded magazine (thirteen rounds) and one additional round in the chamber. A thorough search was made of the surrounding area in an attempt to locate the sixth round that Stowe had fired. It could not be found. Forensic examination of Stowe's weapon and the recovered casings determined that all six casings had been ejected from Stowe's weapon.

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<sup>3</sup> The location of shell casings at a shooting scene are indicative of a general area from which shots were fired, but cannot be used to determine precisely where a shooter was when firing. The distance which a casing will travel upon ejection is affected by the manner in which the weapon is held or gripped when fired, and casings can bounce or roll from their original point of impact with the ground, especially on hard paved surfaces.

Before coming to rest, Brown's jeep had struck and damaged other parked vehicles. The force of impact dislocated three parked vehicles (# 2, 3 and 4) as shown on the diagram of the scene. Vehicle # 4 was also dislocated so as to cause impact with vehicle # 5 as shown. Brown's jeep is noted as vehicle # 1 in this diagram. The location and condition of these vehicles was carefully documented with photographs before any of the vehicles were moved. After the vehicles were disengaged one from the others, additional photographs were taken to document damages to each.

Alexandria Officer Mark Morgan, a member of the Department's accident reconstruction unit, conducted an examination of all four tires of the jeep before it was moved. He noted that the left rear tire had sustained damage from a loss of traction with the road surface, and that the tire appeared to have spun freely while making very little contact with the roadway. Morgan reported that the tire showed extreme wear and a glazed appearance and was slightly tacky to the touch, consistent with having spun at a high speed (rpm) with little traction. Morgan noted that directly behind the tire were small pieces of rubber that had been shed after the vehicle had come to rest and power was still applied to that wheel. He was able to detect a tire mark that began as a faint shadow about 30 feet from where the vehicle came to rest, becoming darker before ending at the tire. This marking is consistent with a tire losing traction and spinning, and would begin faintly and become darker as the tire heated and more rubber was transferred to the road surface. The other three tires were unremarkable in their appearance. Attempts to detect needle slap marks on the gauge faces of the vehicle's tachometer and speedometer by use of alternative light sources were unsuccessful.

Brown's jeep was removed and impounded, and remains in police custody. The locations where it appeared five bullets struck the vehicle were measured and recorded with photographs. (These locations are individually described in the portion of this report related to trajectory analysis.)

Officers noted an odor of burnt marijuana inside the passenger compartment of the jeep, and found rolling papers and a twenty pack of 12 ounce beers with 10 remaining, a 12 pack of 12 ounce beers with all 12 still in the case, and a pack of 12 bottles of mixed drinks with five remaining in the cargo area of the vehicle.

Examination of business establishments in the area, including IHOP, revealed no video surveillance equipment that captured any views of areas relevant to the incident.

On March 30, 2006, at my request, Alexandria City survey engineers conducted an elevation survey of the parking lot where this incident took place. They were assisted by Alexandria Police Detective Tom Durkin and Crime Scene Investigator Jim Colantuoni, who pointed out locations relevant to the survey. The purpose of this survey was to determine the difference in grade level, if any, between the area where it appears Officer Stowe was standing when he fired, and the north end of the parking lot where the vehicle in which Brown was a passenger turned and headed south.

The distance between these two points was marked and recorded as 120.04 feet. Elevation measured at the north point was 247.9 feet. Elevation measured at the south point was 245.8 feet. These measurements indicate the area of the location from which Stowe fired is 2.1 feet lower at grade than the north end of the lot where the car turned.

The roadway at the southern end of the parking lot where the shell casings were found measures 23 feet wide between the two marked rows of parking spaces.

### ***C. Accident Reconstruction:***

Brown's jeep was examined by an experienced automobile mechanic employed by the City of Alexandria General Services Department Fleet Services Division. He found no mechanical defect or condition which would have materially impacted operation or performance of the jeep at the time

of its operation on February 25, 2006.

The Alexandria Police Department requested assistance from Fairfax County Police in accident reconstruction. On April 21, 2006 I met with Fairfax County Police Detective James J. Banachoski to discuss this case. Banachoski is a sixteen year veteran of the Fairfax County Police Department, and has served for eight years in the Department's Crash Reconstruction Unit. He has undergone over 800 hours of specialized training in the field of crash reconstruction. At this meeting, Detective Banachoski provided written copies of data collected and calculations made in connection with his work on this case.

On March 9, 2006 Banachoski and members of his unit conducted testing at the IHOP lot with an identical model 1995 Jeep Cherokee. (Because of damage, Brown's jeep could not be used for test driving.) The purpose of these tests was to gather a range of data, variable according to the speed of the vehicle, regarding the time it would take for the jeep to travel from the north end of the lot where it turned to Stowe's approximate location. This distance was measured at 120 feet. Tests were conducted to determine the elapsed time under conditions that measured the jeep entering the turn at 10 miles per hour, 15 miles per hour, and 20 miles per hour. At each speed, variable acceleration rates were applied in separate tests, and the speed of the vehicle at the end of the course was captured by radar and recorded. Results were recorded separately by two different observers.

In addition to this data collection, Banachoski also calculated an estimated speed of the jeep at impact with parked vehicles. To complete these calculations, he examined the damage to the jeep and the three vehicles it impacted, as well as the final positions of all the vehicles as documented in photographs and diagrams prepared by crime scene investigators. Taking into account the weight of the vehicles and the force required to cause the recorded damage and vehicle movement, he

calculated the speed of jeep at impact at 24.77 miles per hour. Banachoski emphasized that this calculation was made conservatively, and that the vehicle could have been traveling at a higher rate of speed.

Course driving data which concludes with a course end speed of 24 to 29 miles per hour was recorded in 4 of the 20 test drives conducted. One 24 mile per hour end speed is recorded when the jeep begins the course at 10 miles per hour and accelerates at a medium rate of 14.93 to 15.88 fps<sup>2</sup>, with a recorded course time of 3.89 to 4.01 seconds. Three other tests, conducted when the jeep begins the 120 foot course at 15 miles per hour and accelerates at a medium rate (17.63 to 21.01 fps<sup>2</sup>), show an average total elapsed time of 3.51 to 3.58 seconds to cover the entire course distance of 120 feet and recorded end speeds of 22, 26 and 29 miles per hour, with an average end speed of 25.6 miles per hour.

Banachoski also indicated that he estimated the impact of the jeep with vehicle # 4 in the scene diagram (a pickup truck) to be at a 35 degree angle. This determination was made by examination of the damage to the truck in contour with the front end of the jeep. He also concurred in the observations of Alexandria Police Officer Morgan regarding the left rear tire of the jeep and Morgan's conclusion that power was applied to this wheel at the time of impact.

#### ***D. Firearm and Trajectory Analysis:***

Stowe, like most Alexandria Police officers, carried a Glock model 23 firearm. The weapon holds a magazine of 13 (thirteen) .40 caliber rounds. The weapon will not fire until a round is in the firing chamber. To chamber a round, the officer must retract the slide. Because chambering a round can delay firing, officers are trained to carry their weapon with a round already in the chamber. To load the weapon in this fashion, a full magazine is inserted, one of the 13 rounds is chambered,



the magazine is then removed and an additional round is inserted in the magazine. When the magazine is reinserted into the weapon, the weapon is fully loaded with one round in the chamber and 13 in the magazine, and capable of firing 14 rounds. This is the manner in which Stowe's weapon was loaded on February 25, 2006. The weapon Stowe carried was examined by Julian J. Mason, a forensic scientist employed by the Virginia Department of Forensic Science Northern Laboratory, and found to be in working order. These weapons are carried in model 6270 level II plus retention holsters. This holster has a strap that snaps over the back of the weapon and requires the officer to rock the weapon slightly backward to draw it from the holster.

On March 3, 2006, Mason also examined the jeep at an evidence bay at the Alexandria Police Department. Mason's examination revealed evidence consistent with the impact of five bullets: two struck the front of the vehicle, a broken window in the driver's side rear door was consistent with the passage of a bullet, and two struck the driver's side near the rear. Mason's findings were reported in a certificate of analysis issued on March 29, 2006:

*A bullet entered the front of the vehicle above the grille and approximately nineteen inches to the right of center. This bullet passed under the hood and entered a channel between the engine compartment and the right fender. The origin was from the front, approximately 30 degrees to the left, and with a downward angle of approximately 3 degrees. Assuming a firearm height of 4 ½ to 5 ½ feet above the ground, this shot would have originated from a distance of approximately 26 to 46 feet away.*

*A second bullet entered the left side of the hood approximately 5 inches forward of the rear edge, and did not exit. The origin was from the front, approximately 50 degrees to the left, and with a downward angle of approximately 6 degrees. Assuming a firearm height of 4 ½ to 5 ½ feet, this shot would have originated from a distance of approximately 9 to 18 feet.*

*The shattered stationary window in the driver's side rear door exhibits radiating fractures consistent with a bullet hole approximately 1 inch above the bottom of the window frame. No angles of entry could be determined for this shot.*

*A fourth bullet perforated the left side of the plastic rear bumper cover and the left quarter panel approximately 1/8 inch from the rear edge, traveled through the inner fender behind the left*

*rear wheel, and struck the frame. The origin was from the rear, approximately 55 degrees to the left, and with a downward angle of approximately 7 degrees. Assuming a firearm height of 4 ½ to 5 ½ feet, this shot would have originated from a distance of approximately 19 to 27 feet. It should be noted that this distance could be considerably less if the shooter was not standing and the firearm was held closer to the ground.*

*The fifth bullet perforated the left rear quarter panel approximately 4 inches from the rear edge and penetrated the inner fender behind the left rear wheel. The origin was from the rear, approximately 30 degrees to the left, and with an upward angle of approximately 4 degrees. Because of the upward angle of impact, the muzzle of the firearm is consistent with having been below the level of this hole, which is approximately 27 ½ inches above the ground. Assuming level ground, this shot would have originated from a distance of less than 33 feet.*

Mason advised the following caveats should be applied to such findings. It is not possible to determine with scientific certainty the precise location of a person firing a weapon from trajectory angles. These angles are approximately determined. The angle of trajectory to the left or right of a target can also be affected by movement of the target and movement of the shooter, especially if both target and shooter are moving simultaneously, and by the manner in which the shooter is holding the weapon.

Angles of entry are also approximately determined. A variation up or down can alter estimates of distance of fire. Estimates of distance of fire also presume the weapon was fired from a "standard" shooting height of 4 1/2 to 5 1/2 feet. If a shooter begins firing in haste after drawing a weapon and raising it to a height less than 4 1/2 feet, or is falling while shooting, these estimates of distance of fire would be shorter. The level of the vehicle as altered by the terrain over which it traveled, its contents, tire pressure, and manner of operation could also influence these determinations.

## ***VI. The Law Applicable to the Case***

### ***The Law of Self Defense:***

The law of self defense provides that if a person reasonably feared, under the circumstances

as they appeared to him, that he was in danger of being killed or that he was in danger of great bodily harm, then a person may use deadly force in self defense. There is no general rule concerning what constitutes reasonable belief of imminent harm. The question is determined by the facts and circumstances of each particular case. It is likewise clear that it does not matter if the belief later turns out to be erroneous. One may assert self defense when he was not actually in danger; so long as a person has *reasonable* grounds for believing that he is in danger, a killing is justifiable. See, *McGhee v. Commonwealth*, 219 Va. 560 (1978), *Stoneman v. Commonwealth*, 66 Va. (25 Gratt.) 877 (1874).

The law of self defense allows the use of deadly force when a person perceives an *imminent* threat of death or serious bodily injury. The law of self defense is the law of necessity. *McGhee v. Commonwealth*, 219 Va. 560, 562, 248 S.E.2d 808, 810 (1978); *Green v. Commonwealth*, 122 Va. 862, 871, 94 S.E. 940, 942 (1918). A person only has the privilege to exercise reasonable force to repel an assault. Once a threat has passed or is no longer imminent, the right to use force to ward it off ceases. *Diffendal v. Commonwealth*, 8 Va. App. 417, 421, 382 S.E.2d 24 (1989). *Foote v. Commonwealth*, 11 Va. App. 61, 396 S.E.2d 851, (1990).

Deadly force may be met with deadly force, but less than deadly force must be met with a proportionally reduced response. *Cook v. Commonwealth*, 219 Va. 769. There is no requirement that law enforcement officers use all feasible alternatives to avoid a situation where deadly force may be required. *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7<sup>th</sup> Cir., 1994). Finally, the law imposes no duty to attempt the use of lethal force in a less than lethal manner. Once a person is entitled to use deadly force in self defense or in defense of others, there exists no obligation to wound, disable, or disarm one's adversary short of killing him. There is no incremental legal measurement among types

or quantities of deadly force once that level is reached. Scott, *Virginia Criminal Law and Procedure*, 3<sup>rd</sup> Edition, 2002.

The test of reasonableness is based on the circumstances as they reasonably appeared to the person in danger. See, *Fortune v. Commonwealth*, 133 Va. 669, 112 S. E. 861 (1922). The issue is whether the actual belief of the person in danger was reasonable in light of the circumstances as he perceived them. *Harper v. Commonwealth*, 196 Va. 723 (1955). In *Graham v. Conner*, 490 U.S. 386, (1989), the Supreme Court of the United States was careful to point out that an officer's actions must be evaluated from the perspective of the officer's perception of the circumstances, rather than with detached hindsight: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-- in circumstances that are tense, uncertain, and rapidly evolving-- about the amount of force that is necessary in a particular situation."

As long as a person has valid grounds for acting in self defense, the law will transfer the justification so that it applies to the killing of a third person, though the killing be unintentional. If the circumstances are such that they would excuse the killing of another in self defense, the emergency will be held to excuse such a result. 40 Am. Jur 2d *Homicide*, Section 144, *State v. Green*, 206 S.E.2d 923 (1974), *People v. Adams*, 291 N.E.2d 54 (1972). *Virginia Model Jury Instructions*, No. 33.910.

## ***VII. Case Analysis:***

Officer Stowe had worked this same detail on many occasions, and previously dealt with customers who left without paying. He indicated in this case he engaged in his usual practice of

signaling a departing vehicle to stop. In doing so, he positioned himself in the middle of the roadway. The travel lanes between the two rows of marked parking spaces on the west side of the lot at the south end are a total of 23 feet in width. Stowe's assumption of a post at the midpoint of this roadway would allow enough room for the vehicle to pass on his left in the appropriate lane of travel. There is no basis to conclude that Stowe acted recklessly or put himself at unnecessary risk in doing so. His actions were that of a reasonable officer under the circumstances.

The totality of the evidence supports the conclusion that Stowe commenced firing at the jeep at close range under reasonable apprehension that he was about to be struck. His own account of events is corroborated by the initial statements of the driver of the jeep and several passengers. The driver clearly stated that he swerved to his left in an attempt to go around Stowe, as Stowe was moving in the same direction (to Smith's left) to get out of the way. The angle at which the jeep hit the pick up truck (35 degrees) establishes that it was traveling to its left. This confluence of movements would have placed Stowe directly in the path of the oncoming jeep. When interviewed by police, the driver indicated his belief that from his perspective at the wheel, Stowe's apprehension of being hit was reasonable. Passenger Breklyn Paulitzky recounted how she exclaimed to Smith, or at least thought to herself, "Oh my God you are going to kill this cop, stop!". She said it appeared to her that Smith might strike the officer as he moved in the same direction when the car swerved. Passenger Christopher Walters stated that when Smith swerved the jeep, "it looked like he was steering almost straight into him," and that the officer fired "from point blank range right in front of us."

The trajectory angles and estimated distances of fire for the first two shots that hit the vehicle suggest that Stowe may have been at an angle to the vehicle at the instant he fired. These

points cannot be plotted with scientific certainty. Both Stowe and the vehicle were moving, and it is not certain at what height or at what angle Stowe held his weapon as he fired. To the extent these points of origin can be approximated, they are consistent with Stowe's account of the incident, and the original accounts of the driver and at least two passengers in the jeep that indicate that it appeared Stowe was about to be hit and that he took immediate evasive action. It is readily apparent that he was in the path of the car when he decided to fire and took evasive action as he apprehended danger. In the period of time it took him to draw and fire his weapon he was obviously moving as quickly as he could to get out of the path of the oncoming vehicle. As he did so, he believed that the jeep was following his movements, as described: "as I was moving away and the front of the vehicle, the front of the vehicle kept turning and coming toward me, and it wasn't slowing down, it was apparent he was just trying to run me over. He wasn't slowing down. He kept turning in the direction that I was moving."

Under the circumstances as they appeared to him, Stowe's apprehensions for his safety were reasonable. When it became apparent to Stowe that the jeep was not going to stop and he began to move to his right, that is the point at which the jeep turned to its left. The driver said he did so not with the intent to strike Stowe, but to drive to the left around him so as to escape. Regardless of the driver's intent, it was certainly reasonable for Stowe to perceive this change in direction toward him, coupled with acceleration, as evidence of the driver's intent to hit him, and he fired at the jeep in response. Even if he was able to flee from the path of the jeep as he first saw it coming toward him, it appeared to him that the driver continued to alter his course and follow him.

Although the trajectory analysis alone cannot determine an angle of entry for the shot that killed Brown, all other evidence is consistent with the conclusion that it was the third shot fired that

struck the vehicle, and that it was fired from an angle approximately perpendicular to the vehicle's direction of travel from a short distance away.

Brown is reported to have been sitting next to the window through which the bullet passed, facing forward. The bullet that struck Brown passed to the right, backward and downward in his body. According to Mason, it entered the vehicle at a height of 48 inches above ground level. (One inch above the bottom of the window frame.) Of course the precise position of Brown's body at the instant of this shot is impossible to determine. However, the location of the entry wound on a person of Brown's stature seated in such a vehicle is consistent with the bullet having entered the vehicle on a downward trajectory. (The entry wound, 14 3/4" below the top of the head, would be below or level with, but not above, the point of entry of the bullet into the vehicle if Brown was seated as indicated.)

If this shot was the first fired, as some witnesses later suggested, while the vehicle was perpendicular to Stowe as it turned at the north end of the lot, it would have traveled on an upward trajectory unless it was fired from a height greater than 73 inches (six feet, one inch). This is because the grade of the parking lot slopes downward to the south. The difference in elevation between these two locations, which are 120 feet apart, is 25 inches. Stowe's location was the lower point. Stowe is five feet seven inches in height, and the elevation at which he held a weapon to fire it would be demonstrably less. There is simply no reasonable combination of circumstances whereby Stowe could have fired this shot from that location and distance in such a manner that it entered the car where it did, entered Brown's body where it did, and traveled downward. Finally, this conclusion is supported by the account of witnesses in the parking lot who indicate no shots were fired until the jeep passed their location.

It is equally untenable to conclude that Stowe commenced firing straight at the front of the jeep from a stationary position in the center of the roadway, as the driver asserts in his later statement, from a distance of over 100 feet. The angles of entry and estimated firing distances determined for the shots which struck the front and the hood of the car clearly demonstrate these shots were fired at much closer quarters and as Stowe was moving to the side.

While Stowe commenced firing under reasonable apprehension of death or serious injury, he continued to fire as the car passed him. The shot which killed Aaron Brown passed through the side window. Obviously if Stowe was off to the side of a passing car, he was no longer in the path of the vehicle. Why did he continue to fire? Put another way, if the first two shots fired were fired when Stowe reasonably apprehended that he was about to be hit by the jeep, why shouldn't he be prosecuted for failing to stop shooting at the instant the jeep passed, since he was not in danger at that instant?

Analysis of this issue requires appreciation of the time that elapsed during this event, and the limits of human reaction time. Estimates of the speed of the jeep as it traveled south through the lot vary greatly. The accident reconstruction data suggests a conservatively calculated speed of 25 miles per hour at point of impact. At 25 miles per hour, a vehicle is traveling at 36.6 feet per second. At 20 miles per hour, a vehicle is traveling at 29.3 feet per second. Even at the slower speed, the jeep would have covered the distance between Kocur's location and its point of impact in less than 3 seconds. If, as both common sense and shooting studies indicate, it took Stowe some portion of that time to react and draw and fire his first shot, then the firing sequence of the remaining five rounds, including the round that killed Brown, is compressed into 1.5 seconds or less.



To make judgments of an officer's behavior based on what he did or did not do in a fraction of a second, it is critical to understand the limits of human reaction-response time and decision making time in shooting situations. Extensive and careful research has been conducted into the practical aspects of police use of force by Dr. Bill Lewinski<sup>4</sup>, a specialist in law enforcement behavioral psychology. Lewinski has spent more than twenty years identifying and scientifically measuring and documenting the mental and physical aspects of life-threatening encounters. His research has focused on such areas as action/reaction times and movements, and is critical to an understanding of the realities of these kinds of encounters. The mechanics of drawing and firing a weapon are by no means instantaneous. In a study conducted in 2002, officers tested in controlled situations required an average of 1.61 to 2.00 seconds to react to a signal and draw and fire one round from a start position in which the shooting hand was at the side of the officer's body near the holster.<sup>5</sup> Level two holsters tested at between 1.72 seconds if unsnapped, to 1.92 seconds snapped.

Under controlled circumstances in which officers are directed to fire as many shots as they can until signaled to stop, once firing commenced, it took about .2 to .25 seconds to fire each additional shot.<sup>6</sup> Scientific literature suggests that a stop reaction time when a person is actively engaged in an action and then reacts to a signal to stop is about one half of a second. In Lewinski's study of officers firing under conditions in which they received a visual signal to stop firing, results

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<sup>4</sup> Related articles by Lewinski are available at the web site of his nonprofit research center at Minnesota State University. ([www.forcescience.org](http://www.forcescience.org))

<sup>5</sup> See, *Biomechanics of Lethal Force Encounters: Officer Movements*, Lewinski, The Police Marksman, November/December 2002.

<sup>6</sup> See, *Officer Reaction-Response Time Delay at the End of A Shot Series*, Tobin, Fackler, M.D., Journal of The International Wound Ballistics Association, Vol. 5, Issue 2, 2001.

were consistent with this general finding. As Lewinski points out, “In law enforcement, these times have to be translated into trigger pulls to be fully appreciated.” In his experiment, in which officers were reacting only to a light going off as a signal to stop shooting, the time to termination of the trigger pull response, when the officer was engaged in a chain of trigger pulls, was at least two and sometimes three trigger pulls or more.<sup>7</sup> Obviously, in the street, in the midst of a highly stressful confrontation, the officer is also engaged in other simultaneous activities that will impact on the termination of his trigger pulling response.<sup>8</sup> Reactions are also complicated by what a National Institute of Justice study of officer involved shootings confirms: most officers reported experiencing a range of psychological, emotional and physiological reactions that distorted time, distance, sight and sound in shooting situations.<sup>9</sup>

Lewinski has also summarized research done at his own center and at Johns Hopkins, Cornell, Oxford and The University of Illinois related to an officer’s ability to stop shooting in response to a change in threatening behavior.<sup>10</sup> He concludes:

*“The delay in noticing any change in the nature of the threat and having the officer change their behavior in response to that threat would likely take the average officer a second to a second and a half in a dynamic, “real world” life-threatening encounter. This process alone could result in an extra 4 to 6 rounds being fired by the officer—if the officer was shooting as quickly as they can, focused on shooting to save their life and also simultaneously assessing the threat.”*

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<sup>7</sup>See, *Reaction Times in Lethal Force Encounters: Time to Start Shooting? Time to Stop Shooting? The Tempe Study*, Lewinski, Hudson, Police Marksman, September/October 2003.

<sup>8</sup> Lewinski points out that officers who are “multi-tasking” ( moving and trying to take cover while firing) will demonstrate longer delays in stopping a series of shots.

<sup>9</sup>NIJ Journal Issue No. 253: *Police Responses to Officer-Involved Shootings*

<sup>10</sup>See, *New Developments in Understanding the Psychological Factors in the “Stop Shooting Response*, Lewinski, FSRC.

Other research shows that threat assessment and decision making add to an officer's reaction time in these situations. As Tobin and Fackler point out in several studies, the beginning and ending of a real life shooting situation is unlike the test environment in which officers are simply given instructions to begin or end shooting in response to a signal. (Such studies do not require the officer to make a decision about whether it is appropriate to shoot or not, he is merely reacting to a signal.) In a real life situation an officer must monitor the situation as it unfolds to decide when to shoot and when to stop shooting. Decision time must therefore be added to reaction-response time to rationally estimate delays in both beginning and ending a series of shots.<sup>11</sup> Their studies, allowing for variables due to more or less complexity of a threat, determine a mean or average decision time of about one half a second.

Assuming, as Lewinski does, that such experiments at least provide a minimal measure of the time it takes an officer to start firing and stop firing under ideal conditions, the results of these studies define minimal limits on an officer's ability to "immediately" respond to changing stimuli and react appropriately.

The evidence indicates that the shot that killed Brown followed the shot that struck the hood of the car. Assuming that Stowe was firing quickly and did so consistently with results of repeated test firing of similar weapons, there was likely an interval of .20 to .25 seconds between the shot to the hood and the fatal shot. If, under the best of controlled testing circumstances, trained police

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<sup>11</sup> See, See, *Officer Reaction-Response Time Delay at the End of A Shot Series*, Tobin, Fackler, M.D., Journal of The International Wound Ballistics Association, Vol. 5, Issue 2, 2001, and *Officer Decision Time in Firing a Handgun*, Tobin, Fackler, M.D., Journal of The International Wound Ballistic Association, Vol. 5, Issue 2, 2001.

officers are demonstrably incapable of ceasing to fire immediately upon receiving a signal to do so, it is unrealistic to assume that Stowe could have reacted to the car's passing within feet of him quickly enough to prevent this shot or even ones that followed. Even assuming that Stowe was capable of perceiving the passing of the jeep and capable of interpreting this event as an indication of the passing of the threat posed by the vehicle, scientific studies universally agree that this reaction would take at least half a second, during which time at least two and perhaps three additional shots would be fired. During this time period, at a speed of 25 miles per hour the jeep would move 9.15 feet in .25 seconds, and 18.3 feet in .50 seconds. Stowe was moving as well, and his position relative to that of the jeep was constantly changing. Even if he were standing still, forward movement of the jeep of only 9.15 feet in .25 seconds accounts for the difference in the trajectory angle measured by Mason for the second shot which hit the vehicle (in the hood) and the probable perpendicular angle of the shot that killed Brown.

As the evidence indicates, Stowe began firing at the jeep under reasonable apprehension of death or serious injury. Under the circumstances of this case, viable criminal charges against Stowe would require a finding that he was capable of reacting to complicated changing stimuli so as to overcome a state of fear (which is the basis of self-defense) and disengage from defensive response in two tenths of a second. In other words, criminal culpability in this case would require judgment against Stowe because he failed to react appropriately and change his behavior in this fraction of a second.

Whatever else justice requires, it must be reasonably premised upon what is humanly possible. To prosecute Stowe criminally for failing to do what no human being could be expected to do under these circumstances in that fraction of a second would define criminal conduct by a

standard fair to no one.

### ***VIII. Conclusion***

Officer Stowe acted reasonably in exiting the IHOP and positioning himself in a location from which he signaled the driver of the jeep to stop. He was placed in a position of reasonable apprehension of death or serious injury by the subsequent actions of the driver of the jeep, and he was entitled to defend himself. While Stowe was not in the path of the jeep at the instant he fired the shot which killed Brown, the forensic evidence of the case and scientific studies of human reaction time establish that Stowe could not reasonably have been expected to have reacted differently and stopped firing before he fired the fatal shot. No criminal charges against Stowe will be filed by this office in connection with this case. The case file is returned to the Police Department for use in its internal inquiry.

Appendix of Photographs:



Overhead view of parking lot before jeep was removed

Side view of vehicles before jeep was removed







Front of jeep (bullet hole above, right of headlight, first impact shot)

Hood of jeep showing bullet hole, second impact shot





Jeep, driver's side, rear door showing shattered vent window through which 3<sup>rd</sup> impact shot (fatal shot) passed

Jeep showing bullet holes of fourth and fifth impact shots







front end damage to jeep

close up of impact area between jeep and vehicle # 3





jeep as it impacted and moved parked vehicles # 3 and 2

jeep being pulled back from vehicles # 2, 3, and 4







vehicles # 3 and 2 after jeep is pulled back

shell casing locations A-E behind vehicle # 6



Case # 06-109452  
Police Shooting  
6254 Duke Street  
02-25-2006  
Inv. Colantuoni, 1295

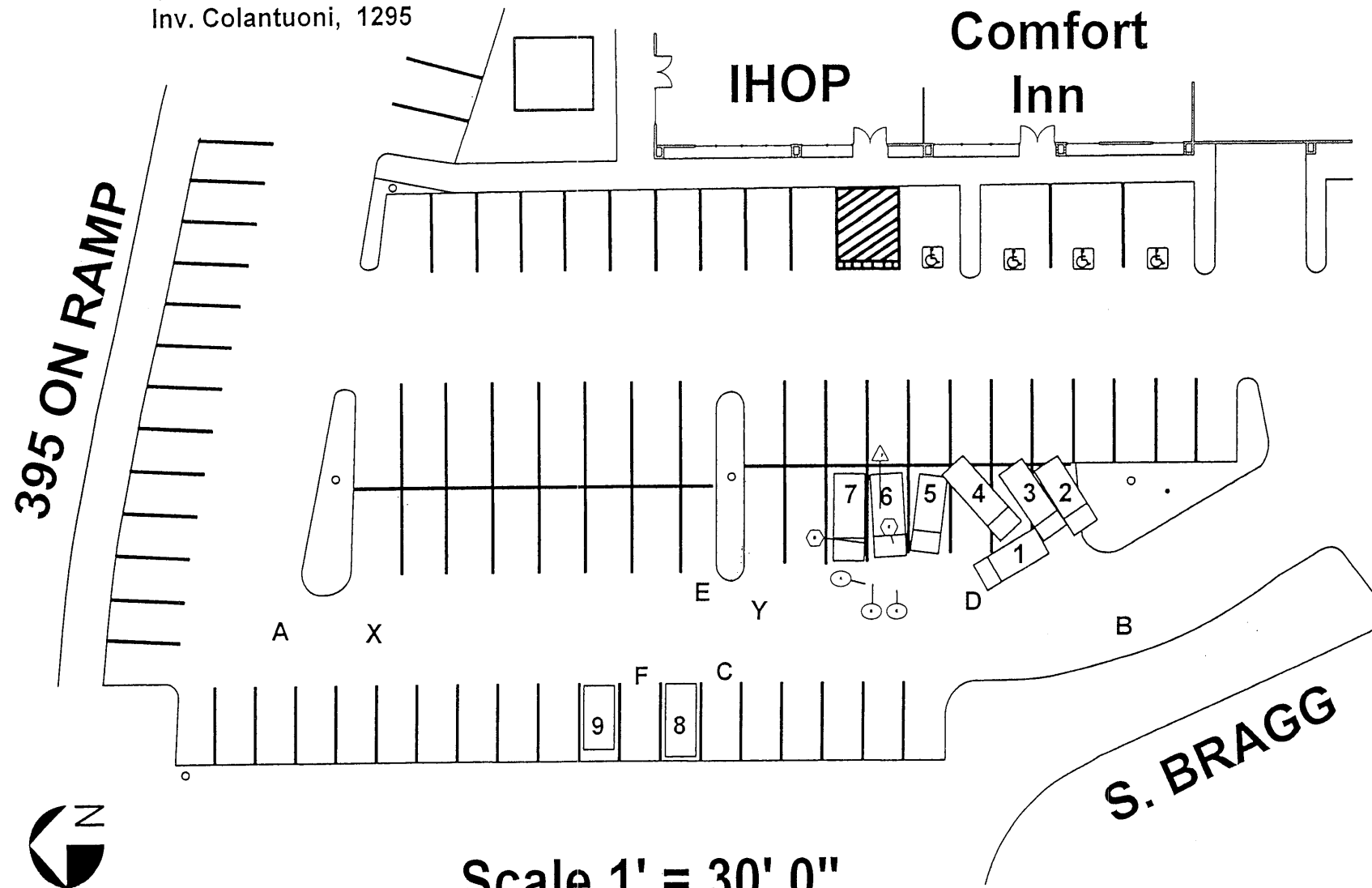


Diagram # 1

**Scale 1' = 30' 0"**

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### Key to Diagram # 1

- 1 Brown's jeep after impact with other vehicles
- 2 Impacted vehicle
- 3 Impacted vehicle
- 4 Impacted vehicle
- 5 Vehicle impacted by vehicle # 4
- 6,7 Vehicles where shell casings were found (see enlargement at diagram # 2)
- 8,9 Vehicles between which witness car was parked
  
- A According to passengers in jeep, approximate location of jeep when officer started firing
- B According to Aaron Daugherty, approximate location of Stowe when he first fired at jeep
- C According to Breklyn Paulitzky, approximate location where jeep swerved.
- D According to Adam Daugherty, approximate location where Stowe began firing
- E According to Christopher Walters, approximate location of Stowe when he first fired at jeep.
- F Location of witness Kocur
- X According to Steve Smith, approximate location of jeep when Stowe started firing
- Y According to Steve Smith, approximate location of Stowe when he first fired at jeep.

### Diagram Notes:

1. (The smaller symbols on diagram #1 showing the locations of shell casings near vehicles # 6 and #7 are shown enlarged in Diagram # 2).
2. Diagrams # 1 and 2 are scanned images of original documents and scale may not be exact.



Key:

- Scale: 1/8" = 1'  
Case 06109452